

LABOUR DEPARTMENT

The 10th December, 1984

No. 9/5/84-6Lab/8644.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Adarsh Fabricators, Plot No. 212, Sector 24, Faridabad:—

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 269/1982

between

SHRI DHARAM RAJ SINGH, WORKMAN AND THE MANAGEMENT OF M/S. ADARSH
FABRICATORS, PLOT NO. 212, SECTOR 24, FARIDABAD

Present:—Shri M.K. Bhandari for the workman.

Shri R.C. Sharma for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Dharam Raj Singh, workman and the management of M/s. Adarsh Fabricators, Plot No. 212, Sector 24, Faridabad, to this Tribunal, for adjudication:—

Whether the termination of service of Shri Dharam Raj Singh was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. On the request of the claimant, the demand notice was treated as claim statement. In the demand notice, dated 30th April, 1982, it was alleged that the claimant joined service of the respondent on 15th March, 1972 as Welder and Cutterman and was drawing Rs. 440 per month. It was then alleged that on 23rd January, 1982, the claimant had to go to meet his brother at Delhi, where he became ill and sent his medical certificate from Delhi and another certificate was also sent by him. It was then alleged that on 23rd March, 1982, the claimant came to join duty along with fitness certificate but he was not allowed to do so and that his services were terminated in an illegal manner and as such he was entitled to reinstatement with full-back wages.

3. The Management in their written statement, dated 13th October, 1982 pleaded that the claimant remained absent from duty without any authority with effect from 23rd January, 1982, when they wrote the letters, dated 29th January, 1982 and 4th February, 1982 asking him to join duty which were received back as undelivered. It was then alleged that the claimant came to the factory on 24th March, 1982 when he was handed over a letter and he submitted his explanation which was not found satisfactory and that the Management terminated his service on 25th March, 1982 and offered him a sum of Rs. 903.50 paise, which included one month's notice pay and service compensation, but the claimant refused to receive the said amount. It was then alleged that the letter was sent to the claimant by post while the amount was remitted by money order, but the same were received back as undelivered. It was further alleged that the medical certificates were sent by the claimant late knowingly and intentionally. It was further pleaded that the claimant joined service on 5th July, 1976 and worked intermittently and was in continuous employment with effect from 17th December, 1980 and was offered benefit of this period at the time of termination of his services. It was further pleaded that the claimant remained absent because he had joined service in Wazirpur Industrial Area, Delhi.

4. The claimant in his rejoinder, dated 23rd August, 1982 reiterated the pleas taken in the claimant statement.

5. On the pleadings of the parties, the following issue was framed on 23rd November, 1982:—

Whether the termination of service of Shri Dharam Raj Singh was justified and in order? If not to, what relief is he entitled?

6. It may be mentioned that the Management has examined two witnesses and documents Ex-M-1 to M-28 have been tendered into evidence. The workman did not appear in witness-box in spite of opportunities given to him. The documents Ex-W-1 to W-3 were tendered into evidence by his representative. After going through the evidence and hearing the representative of both the parties, my finding on the above issue is as under:—

Issue No. 1—

7. The management examined MW-1 Shri J.N. Arora, Manager who stated that the claimant filed an application Ex. M-1 in 1977 when the appointment letter Ex. M-3 was issued. He further stated that the claimant

gave leave application Ex. M-5 for one day and thereafter he absented himself when the letters Ex. M-6, M-9 and M-12 were sent to him by registered post,—*vide* postal receipts Ex. M-7, M-10 and M-13 which were received back as undelivered as Ex. M-8, M-11 and M-14. He further stated that the claimant came on 24th March, 1982 when the letter Ex. M-15 was given to him and he submitted his explanation Ex. M-16 and that after considering the medical certificates Ex. M-17 and M-18, his services were terminated on 25th March, 1982,—*vide* letter Ex. M-19 because his explanation was not found to be satisfactory. He further stated that the claimant refused to receive the amount of notice pay and compensation as well as the letter, dated 25th March, 1982, terminating his service and that Ex. M-22 was sent by registered post which was received back as undelivered. He further stated that the amount of Rs. 903.50 paise was mentioned in the voucher Ex. M-20 was sent by money order to the claimant,—*vide* postal receipt Ex. M-23 but the amount was received back as undischursed,—*vide* money order coupon Ex. M-24. He further stated that the medical certificates Ex. M-25, and M-26 were received from the claimant,—*vide* registered envelopes Ex. M-27 and M-28. MW-2 Shri R.K. Siba, Proprietor of the respondent, stated that he went to Delhi and his oral enquiry revealed that the claimant got service in first instance in Narcla Steels and thereafter in Malti Tax, Wazirpur, Delhi and was now serving with M/s. R.C. Gupta, 221, Okhla Industrial Area, New Delhi.

8. The workman has not appeared in the witness-box but documents Ex. W-1 to W-8, were tendered into evidence by his representative.

9. The above evidence shows that on 22nd January, 1982 the claimant filed the leave application Ex. M-5 for one day and thereafter he did not join duty, when the letters Ex. M-6, M-9, M-12, dated 29th January, 1982, 4th February, 1982 and 9th February, 1982, respectively were written to him to join duty. He appeared on 24th March, 1982 when the letter Ex. M-15 was handed over to him to explain his position and the claimant gave his reply on that date (Ex. M-16) in which he mentioned that he remained ill and had sent medical certificates Ex. M-25 and M-26. After considering his explanation the Management has terminated his services because his explanation was not found to be satisfactory. The medical certificate Ex. M-26 is for the period of 23rd January, 1982 to 15th February, 1982. It was sent,—*vide* letter Ex. W-1 on 12th February, 1982. Consequently, this medical certificate was sent after considerable delay. Likewise the medical certificate Ex. M-25 for the period of 16th February, 1982 to 2nd March, 1982 was sent,—*vide* letter Ex. W-3 on 1st March, 1982. This medical certificate was consequently sent after a great delay. The medical certificate Ex. M-18 for the period 3rd March, 1982 to 23rd March, 1982 was produced on 24th March, 1982 alongwith fitness certificate Ex. M-17. Since all the three medical certificates were produced late by the claimant, the management did not consider his explanation as satisfactory and terminated his services. In Rule 16(4) of the Industrial Employment (Standing Orders) Punjab Haryana First Amendment Rules, 1969, it is laid down that if a workman remains absent without sanctioned leave and he returns within 10 days after the expiry of the leave, he has to explain his absence to the satisfaction of the management. Since the claimant failed to explain his absence, the Management terminated his service as mentioned above. The claimant has not appeared in the witness-box to rebut the evidence produced by the Management nor has he examined the concerned Doctor to show that the Medical certificates issued by him were *bona fide*. The documentary evidence produced by the claimant does not help him because the documents Ex. W-1 and W-3 are the letters by which the medical certificates were sent. Ex. W-2 and W-4 are the postal receipts. Ex. W-5 is the copy of the explanation, dated 24th March, 1982 given by the claimant. Ex. W-6 and W-7 are copies of the conciliation proceeding while Ex. W-8 is the copy of the letter, dated 7th April, 1982 sent by the claimant to the Labour-cum-Conciliation Officer, Sector 15, Faridabad when the service of the claimant had already been terminated. All these documents, therefore, are of no help to the claimant. Since his services were terminated under Rules 16(4) of 1968 Rules, therefore the question of holding domestic enquiry did not arise because the enquiry is held in that case where the claimant is charge-sheeted for misconduct under Rules, 20 of Industrial Employment (Standing Orders) (Punjab) Haryana First Amendment Rules, 1969. In the ruling reported as Indian Iron and Steel Company Ltd., and their workmen, 1958-LLJ-page 260, it is laid down that where the ground of discharge is continued absence of the employee, no charge-sheet is to be framed nor any domestic enquiry is to be held. Consequently the services of the claimant were terminated by the management in a legal manner. The Management has also complied with the provisions of section 25-F of the Industrial Disputes Act because the amount of notice pay and compensation was offered to the claimant on 25th March, 1982, but he refused to receive the amount and the amount was also sent by money order, which was also not accepted by the claimant as mentioned in the documents, Ex-M-19 and M-24 and as deposed to by MW-1 Shri J.N. Arora.

10. In view of the above discussions, the termination of service of the claimant was justified and in order and as such the claimant is not entitled to any relief. The award is passed accordingly.

Dated, the 9th November, 1984.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

Endst. No. 1217, dated 21st November, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment, Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.